

SUBCHAPTER III. DRAINAGE DISTRICTS.

Article 5.

Establishment of Districts.

§ 156-54. Jurisdiction to establish districts.

The clerk of the superior court of any county in the State of North Carolina shall have jurisdiction, power and authority to establish levee or drainage districts either wholly or partly located in his county, and which shall constitute a political subdivision of the State, and to locate and establish levees, drains or canals, and cause to be constructed, straightened, widened or deepened, any ditch, drain or watercourse, and to build levees or embankments and erect tidal gates and pumping plants for the purpose of draining and reclaiming wet, swamp or overflowed land; and it is hereby declared that the drainage of swamplands and the drainage of surface water from agricultural lands and the reclamation of tidal marshes shall be considered a public use and benefit and conducive to the public health, convenience and welfare, and that the districts heretofore and hereafter created under the law shall be and constitute political subdivisions of the State, with authority to provide by law to levy taxes and assessments for the construction and maintenance of said public works. (1909, c. 442, s. 1; C.S., s. 5312; 1921, c. 7.)

§ 156-55. Venue; special proceedings.

When the lands proposed to be drained and created into a drainage district are located in two or more counties, the clerk of the superior court of either county has the jurisdiction conferred by this Subchapter. Venue is in that county in which the petition is first filed. The law and the rules regulating special proceedings apply in the proceeding, except as modified by this Subchapter. The proceedings may be ex parte or adversary. (1909, c. 42, ss. 2, 38; C.S., s. 5313; 1999-216, s. 19.)

§ 156-56. Petition filed.

A petition signed by a majority of the resident landowners in a proposed drainage district or by the owners of three fifths of all the land which will be affected or assessed for the expense of the proposed improvements may be filed in the office of the clerk of the superior court of any county in which a part of the lands is located, setting forth that any specific body or district of land in the county and adjoining counties, described in such a way as to convey an intelligent idea as to the location of such land, is subject to overflow or too wet for cultivation, and the public benefit or utility or the public health, convenience or welfare will be promoted by draining, ditching, or leveeing the same or by changing or improving the natural watercourses, and setting forth therein, as far as practicable, the starting point, route, and terminus and lateral branches, if necessary, of the proposed improvement.

The petition will also show whether or not the proposed drainage is for the reclamation of lands not then fit for cultivation or for the improvement of land already under cultivation. It shall also state that, if a reclamation district is proposed to be established, such lands so reclaimed will be of such value as to justify the reclamation. (1909, c. 442, s. 2; C.S., s. 5314; 1921, c. 76; Pub. Loc. 1923, c. 88, s. 2; 1925, c. 85; 1927, c. 98.)

§ 156-57. Bond filed and summons issued.

Upon filing with the petition a bond for the amount of fifty dollars (\$50.00) per mile for each mile of the ditch or proposed improvement, signed by two or more sureties or by some lawful and authorized surety company, to be approved by the clerk of superior court, conditioned for the payment of all costs and expenses incurred in the proceeding in case the court does not grant the prayer of the petition, the clerk, shall at any time thereafter, issue summons to be served on all the defendant landowners, who have not joined in the petition and whose lands are included in the proposed drainage district. The summons may be served by publication as to any defendant who cannot be personally served as provided by law.

The attorney for the petitioners shall certify to the clerk of the superior court, prior to the hearing on the final report of the board of viewers, that due diligence has been used to determine the names of all landowners within the area of the proposed drainage district; and, that summons has been issued for such landowners, so determined, and served either by personal service or by publication for all known and unknown landowners, insofar as could be determined by due diligence. (1909, c. 442, s. 2; C.S., s. 5315; 1967, c. 621.)

§ 156-58. Publication in case of unknown owners.

If, at the time of the filing of the petition, or at any time subsequent thereto, it shall be made to appear to the court by affidavit or otherwise that the names of the owners of the whole or any share of any tracts of land are unknown, and cannot after due diligence be ascertained by the petitioners, the court shall order a notice in the nature of a summons to be given to all such persons by a publication of the petition, or of the substance thereof, and describing generally the tracts of land as to which the owners are unknown, with the order of the court thereon, in some newspaper published in the county wherein the land is located, or in some other county if no newspaper shall be published in the first-named county, which newspaper shall be designated in the order of the court, and a copy of such publication shall be also posted in at least three conspicuous places within the boundaries of the proposed district, and at the courthouse door of the county. Such publication in a newspaper and by posting shall be made for a period of four weeks. After the time of publication shall have expired, if no person claiming and asserting title to the tracts of land and entitled to notice shall appear, the court in its discretion may appoint some disinterested person to represent the unknown owners of such lands, and thereupon the court shall assume jurisdiction of the tracts of land and shall adjudicate as to such lands to the same extent as if the true owners were present and represented, and shall proceed against the land itself. If at any time during the pendency of the drainage proceeding the true owners of the lands shall appear in person, they may be made parties defendant of their own motion and without the necessity of personal service, and shall thereafter be considered as parties to the proceeding; but they shall have no right to except to or appeal from any order or judgment theretofore rendered, as to which the time for filing exceptions on notice shall have expired. (1911, c. 67, s. 1; C.S., s. 5316; 1953, c. 675, s. 25.)

§ 156-59. Board of viewers appointed by clerk.

The clerk shall, on the filing of petition and bond, appoint a disinterested and competent civil and drainage engineer and two resident freeholders of the county or counties in which the lands are located as a board of viewers to examine the lands described in the petition and make a preliminary report thereon. The drainage engineer shall be appointed upon the recommendation of the Department of Environmental Quality; and no member of the board of viewers so appointed shall own any land within the boundaries of the proposed district.

In the selection of the two members of the board of viewers, other than the engineer, the clerk before making the appointment shall make careful inquiry into the character and qualifications of the proposed members, to the end that the members so appointed shall possess the necessary character, capacity, fitness, and impartiality for the discharge of their important duties. (1909, c. 442, s. 2; 1917, c. 152, s. 1; C.S., s. 5317; 1961, c. 614, s. 4; c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(157); 1997-443, s. 11A.123; 2015-241, s. 14.30(u).)

§ 156-60. Attorney for petitioners.

The petitioners shall select some learned attorney or attorneys to represent them, who shall prosecute the drainage proceeding and advise with the petitioners and board of viewers, and shall agree upon the compensation for his professional services up to the time when the district shall be established and the board of drainage commissioners elected, or as nearly so as the same may be approximated. If the petitioners are unable to agree upon the selection of an attorney or attorneys, the selection may be made by the clerk of the court. The foregoing provision shall not interfere with the right of any individual petitioner in the selection of an attorney to represent his individual interests if he shall deem the same desirable or necessary. (1917, c. 152, s. 1; C.S., s. 5318.)

§ 156-61. Estimate of expense and manner of payment; advancement of funds and repayment from assessments.

The clerk may make an estimate of the aggregate sum of money which shall appear to be necessary to pay all the expenses incident to the performance of the duties by the board of viewers, including the compensation of the drainage engineer and his necessary assistants, and also including the sum for the compensation of the attorney for the district, and such court costs as may probably accrue, which estimates shall embrace the period of services up to and including the establishment of the drainage district and the selection and appointment of the board of drainage commissioners. The clerk shall then estimate the number of acres of land owned or represented by the petitioners, as nearly so as may be practicable without actual survey, and shall assess each acre so represented a level rate per acre, to the end that such assessment will realize the sum of money which he has estimated as necessary to pay all necessary costs of the drainage proceeding up to the time of the appointment of the drainage commissioners, as above provided. The assessment above provided for which has been or may hereafter be levied shall constitute a first and paramount lien, second only to State and county taxes, upon the lands so assessed, and shall be collected in the same manner and by the same officers as county taxes are collected. The board of viewers, including the drainage engineer, shall not be required to enter upon the further discharge of their duties until the amount so estimated and assessed shall be paid in cash to the clerk of the court, which shall be retained by him as a court fund, and for which he shall be liable in his official capacity, and he shall be authorized to disburse the same in the prosecution of the drainage proceeding. Unless all the assessments shall be paid within a time to be fixed by the court, which may be extended from time to time, no further proceedings shall be had, and the proceeding shall be dismissed at the cost of the petitioners. If the entire sum so estimated and assessed shall not be paid to the clerk within the time limited, the amounts so paid shall be refunded to the petitioners pro rata after paying the necessary costs accrued. Nothing herein contained shall prevent one or more of the petitioners from subscribing and paying any sum in addition to their assessment in order to make up any deficiency arising from the delinquency of one or more of the petitioners.

When the sum of money so estimated shall be paid, the board of viewers shall proceed with the discharge of their duties, and in all other respects the proceeding shall be prosecuted according to the law. After the district shall have been established and the board of drainage commissioners appointed, it shall be the duty of the board of drainage commissioners to refund to each of the petitioners the amount so paid by them as above provided, out of the first moneys which shall come into the hands of the board from the sale of bonds or otherwise, and the same shall be included in ascertaining the total cost of improvement.

In lieu of the procedures set forth in the preceding paragraph, the board of county commissioners may advance funds, or any part thereof, for the purposes set forth in the preceding paragraph. Such advances shall be made to a county official designated by the commissioners, and shall be disbursed upon such terms as the county commissioners may direct. If the district shall be organized, the funds advanced shall be repaid from assessments thereafter levied. (1917, c. 152, s. 1; C.S., s. 5319; 1941, c. 342; 1961, c. 614, s. 6; c. 662.)

§ 156-62. Examination of lands and preliminary report.

The board of viewers shall proceed to examine the land described in the petition, and other land if necessary to locate properly such improvement or improvements as are petitioned for, along the route described in the petition, or any other route answering the same purpose if found more practicable or feasible, and may make surveys such as may be necessary to determine the boundaries and elevation of the several parts of the district, and shall make and return to the clerk of the superior court within 30 days, unless the time shall be extended by the court, a written report, which shall set forth:

- (1) Whether the proposed drainage is practicable or not.
- (2) Whether it will benefit the public health or any public highway or be conducive to the general welfare of the community.
- (3) Whether the improvement proposed will benefit the lands sought to be benefited.
- (4) Whether or not all the lands that are benefited are included in the proposed drainage district.
- (5) Whether or not the district proposed to be formed is to be a reclamation district or an improvement district. A reclamation district is defined to be a district organized principally for reclaiming lands not already under cultivation. An improvement district is defined to be a district organized principally for the improvement of lands then under cultivation. The board of viewers shall further report, if the district is a reclamation district within the above definition, whether or not the proposed drainage would be justified by the additional value for agricultural purposes given to land so drained.

They shall also file with this report a map of the proposed drainage district, showing the location of the ditch or ditches or other improvement to be constructed and the lands that will be affected thereby, and such other information as they may have collected that will tend to show the correctness of their findings. (1909, c. 442, s. 3; C.S., s. 5320; 1927, c. 98, s. 2.)

§ 156-63. First hearing of preliminary report.

The clerk of the superior court shall consider this report. If the viewers report that the drainage is not practicable or that it will not benefit the public health or any public highway or be conducive

to the general welfare of the community, and the court shall approve such findings, the petition shall be dismissed at the cost of the petitioners, and such petition shall likewise be dismissed at the cost of the petitioners if it is sought to set up a reclamation district and the viewers report that the cost of reclaiming the land would be so great as not to justify the expense of draining it. Such petition or proceeding may again be instituted by the same or additional landowners at any time after six months, upon proper allegations that conditions have changed or that material facts were omitted or overlooked. If the viewers report that the drainage is practicable and that it will benefit the public health or any public highway or be conducive to the general welfare of the community, and the court shall so find, then the court shall fix a day when the report will be further heard and considered. (1909, c. 442, s. 4; C.S., s. 5321; 1927, c. 98, s. 3.)

§ 156-64. Notice of further hearing.

If the petition is entertained by the court, notice shall be given by publication once a week for at least two consecutive weeks in some newspaper of general circulation within the county or counties, if one shall be published in such counties, and also by posting a written or printed notice at the door of the courthouse and at five conspicuous places within the drainage district, that on the date set, naming the day, the court will consider and pass upon the report of the viewers. At least 15 days shall intervene between the date of the publication and the posting of the notices and the date set for the hearing. (1909, c. 442, s. 5; C.S., s. 5322; 1963, c. 767, s. 1.)

§ 156-65. Further hearing, and district established.

At the date appointed for the hearing the court shall hear and determine any objections that may be offered to the report of the viewers. If it appear that there is any land within the proposed levee or drainage district that will not be affected by the leveeing or drainage thereof, such lands shall be excluded and the names of the owners withdrawn from such proceeding; and if it shall be shown that there is any land not within the proposed district that will be affected by the construction of the proposed levee or drain, the boundary of the district shall be so changed as to include such land, and such additional landowners shall be made parties plaintiff or defendant, respectively, and summons shall issue accordingly, as hereinbefore provided. After such change in the boundary is made, the sufficiency of the petition shall be verified, to determine whether or not it conforms to the requirements hereinbefore provided. The efficiency of the drainage or levees may also be determined, and if it appears that the location of any levee or drain can be changed so as to make it more effective, or that other branches or spurs should be constructed, or that any branch or spur projected may be eliminated or other changes made that will tend to increase the benefits of the proposed work, such modification and changes shall be made by the board. The engineer and the other two viewers may attend this meeting and give any information or evidence that may be sought to verify and substantiate their report. If necessary, the petition, as amended, shall be referred by the court to the engineer and two viewers for further report. The above facts having been determined to the satisfaction of the court, and the boundaries of the proposed district so determined, it shall declare the establishment of the drainage or levee district, which shall be designated by a name or number, for the object and purpose as herein set forth.

If any lands shall be excluded from the district because of the court having found that such lands will not be affected or benefited, and the names of the owners of such lands have been withdrawn from such proceeding, but such lands are so situated as necessarily to be located within the outer boundaries of the district, such fact shall not prevent the establishment of the district, and

such lands shall not be assessed for any drainage tax; but this shall not prevent the district from acquiring a right-of-way across such lands for constructing a canal or ditch or for any other necessary purpose authorized by law.

The court shall further determine, if it is sought to establish a reclamation district, whether or not the increased value of the particular land should be so great as to justify the cost and expenses of its reclaiming. (1909, c. 442, s. 6; 1911, c. 67, s. 2; C.S., s. 5323; 1927, c. 98, s. 4.)

§ 156-66. Right of appeal.

Any person owning lands within the drainage or levee district which he thinks will not be benefited by the improvement and should not be included in the district may appeal from the decision of the court to the superior court of such county, in termtime, by filing an appeal, accompanied by a bond conditioned for the payment of the costs if the appeal should be decided against him, for such sum as the court may require, not exceeding two hundred dollars (\$200.00), signed by two or more solvent sureties or in some approved surety company to be approved by the court. (1909, c. 442, s. 8; C.S., s. 5324.)

§ 156-67. Condemnation of land.

If it shall be necessary to acquire a right-of-way or an outlet over and through lands not affected by the drainage, and the same cannot be acquired by purchase, then and in such event the power of eminent domain is hereby conferred, and the same may be condemned. The owners of the land proposed to be condemned may be made parties defendant in the manner of an ancillary proceeding, and the procedure shall be, to the extent practicable, supplemented by the provisions of Chapter 40A Eminent Domain and such damages as may be awarded as compensation shall be paid by the board of drainage commissioners out of the first funds which shall be available from the proceeds of sale of bonds or otherwise. (1909, c. 442, s. 7; C.S., s. 5325; 1981, c. 919, s. 24.)

§ 156-68. Complete survey ordered.

After the district is established the court shall refer the report of the engineer and viewers back to them to make a complete survey, plans, and specifications for the drains or levees or other improvements, and fix a time when the engineer and viewers shall complete and file their report, not exceeding 60 days. (1909, c. 442, s. 9; C.S., s. 5326.)

§ 156-69. Nature of the survey; conservation and replacement of fish and wildlife habitat; structures to control and store water.

The engineer and viewers shall have power to employ such assistants as may be necessary to make a complete survey of the drainage district, and shall enter upon the ground and make a survey of the main drain or drains and all its laterals. The line of each ditch, drain, or levee shall be plainly and substantially marked on the ground. The course and distance of each ditch shall be carefully noted and sufficient notes made, so that it may be accurately plotted and mapped. A line of levels shall be run for the entire work and sufficient data secured from which accurate profiles and plans may be made. Frequent bench marks shall be established among the line, on permanent objects, and their elevation recorded in the field books. If it is deemed expedient by the engineer and viewers, other levels may be run to determine the fall from one part of the district to another. If an old watercourse ditch, or channel is being widened, deepened, or straightened, it shall be accurately

cross-sectioned so as to compute the number of cubic yards saved by the use of such old channel. A drainage map of the district shall then be completed, showing the location of the ditch or ditches and other improvements and the boundary, as closely as may be determined by the records, of the lands owned by each individual landowner within the district. The location of any railroads or public highways and the boundary of any incorporated towns or villages within the district shall be shown on the map. There shall also be prepared to accompany this map a profile of each levee, drain, or watercourse, showing the surface of the ground, the bottom or grade of the proposed improvement, and the number of cubic yards of excavation or fill in each mile or fraction thereof, and the total yards in the proposed improvement and the estimated cost thereof, and plans and specifications, and the cost of any other work required to be done.

The board of viewers shall consider the effect of the proposed improvements upon the habitat of fish and wildlife, and the laws and regulations of the Commission for Public Health. Their report shall include their recommendations and the estimated cost thereof, as to the conservation and replacement of fish and wildlife habitat, if they shall determine such shall be damaged or displaced by the proposed improvement. The board, to determine their recommendations, may consult governmental agencies, wildlife associations, individuals, or such other sources as they may deem desirable, to assist them in their considerations of and recommendations relating to, the conservation and replacement of fish and wildlife habitat.

The board of viewers shall consider the need for and feasibility of, the construction of structures which will do one or more of the following:

- (1) Control the flow of water,
- (2) Impound or store water and,
- (3) Provide areas for conservation and replacement of fish and wildlife habitat.

If structures are recommended for any one or more of said purposes, their report shall include:

- (1) Specifications therefor.
- (2) Location thereof together with the description of the area of land needed for the purpose of said structure, i.e., water storage or impoundment, or fish and wildlife habitat.
- (3) Estimate of cost thereof.

The report of the board of viewers shall set forth, in regard to the foregoing, the following information:

- (1) The areas of land needed for construction and maintenance of:
 - a. The canals and drainage system.
 - b. Structures to:
 1. To control the water,
 2. Impound or store water and,
 3. To conserve and replace fish and wildlife habitat.
- (2) Upon whose land such areas are located.
- (3) The area of land necessary to be acquired from each landowner.

The map accompanying the report shall have shown thereon, the location of the areas of land needed for the construction and maintenance of the following:

- (1) The canal and drainage system.
- (2) Structures to:
 - a. Control the flow of water,
 - b. Impound or store the water,
 - c. Conserve and replace fish and wildlife habitat.

The board of viewers may, in its discretion, agree with the Soil Conservation Service of the Department of Agriculture or any agency of the government of the United States or of the State of North Carolina whereby such agency will furnish all or a part of the service necessary to obtain the information set forth in the preceding paragraph and in G.S. 156-68.

The board of viewers may accept such information as furnished by such agencies and include such information in their final report to the clerk.

The board of viewers and engineers of the district may use control or semicontrol, mosaic aerial photographs or other sources and stereoscopic or other methods, generally used and deemed acceptable by civil and drainage engineers for the purpose of obtaining the information required in this section and in lieu of a detailed ground survey. In the event a detailed ground survey is not made, only those ground markings need be made as the board of viewers deem necessary. The location of the proposed canals must be shown on the ground prior to actual construction. (1909, c. 442, s. 10; C.S., s. 5327; 1959, c. 597, s. 1; 1961, c. 614, ss. 5, 9; 1965, c. 1143, s. 1; 1973, c. 476, s. 128; 2007-182, s. 2.)

§ 156-70. Assessment of damages.

It shall be the further duty of the engineer and viewers to assess the damages claimed by anyone that are justly right and due to him for land taken or for inconvenience imposed because of the construction of the improvement, or for any other legal damages sustained. Such damages shall be considered separate and apart from any benefit the land would receive because of the proposed work, and shall be paid by the board of drainage commissioners when funds shall come into their hands. (1909, c. 442, s. 11; 1915, c. 238; 1917, c. 152, s. 16; C.S., s. 5328.)

§ 156-70.1. When title deemed acquired for purpose of easements or rights-of-way; notice to landowner; claim for compensation; appeal.

The district shall be deemed to have acquired title for the purpose of easements or rights-of-way to those areas of land identified in the final report of the board of viewers and as shown on the map accompanying said report, at the time said final report is confirmed by the clerk of the superior court.

The board of viewers shall cause notice as to the area or areas of land involved, to be given to each landowner so affected, which notice shall be in writing and mailed to the last known address of the landowner at least seven days prior to the hearing on the final report as provided by G.S. 156-73.

If the landowner desires compensation for the land areas so acquired by the district, claim for the value of the same shall be submitted to the board of viewers on or before the time of the adjudication upon the final report as provided for by G.S. 156-74.

If the board of viewers shall approve the claim, the amount so approved shall be added to the total cost of the district as estimated in said final report and this shall be done by amendment to the final report submitted to the clerk of the superior court on or before the adjudication provided for in G.S. 156-74.

If the board of viewers shall not approve said claim, the clerk of the superior court shall consider the claim and determine what in his opinion is a fair value and the amount so determined shall be shown in the said final report as amended and confirmed by said adjudication. The landowner or the drainage district may appeal from the decision of the clerk of the superior court, to the superior court, upon the question of the value of the land taken and such value shall be

determined by a jury. The procedure for the appeal shall be in accordance with the provision of G.S. 156-75. (1959, c. 597, s. 2; c. 1085; 1965, c. 1143, s. 2.)

§ 156-71. Classification of lands and benefits.

It shall be the further duty of the engineer and viewers to personally examine the land in the district and classify it with reference to the benefit it will receive from the construction of the levee, ditch, drain, or watercourse or other improvement. In the case of drainage, the degree of wetness on the land, its proximity to the ditch or a natural outlet, and the fertility of the soil shall be considered in determining the amount of benefit it will receive by the construction of the ditch. The land benefited shall be separated in five classes. The land receiving the highest benefit shall be marked "Class A"; that receiving the next highest benefit, "Class B"; that receiving the next highest benefit, "Class C"; that receiving the next highest benefit, "Class D," and that receiving the smallest benefit, "Class E." The holdings of any one landowner need not be all in one class, but the number of acres in each class shall be ascertained, though its boundary need not be marked on the ground or shown on the map. The total number of acres owned by one person in each class and the total number of acres benefited shall be determined. The total number of acres of each class in the entire district shall be obtained and presented in tabulated form. The scale of assessment upon the several classes of land returned by the engineer and viewers shall be in the ratio of five, four, three, two, and one; that is to say, as often as five mills per acre is assessed against the land in "Class A," four mills per acre shall be assessed against the land in "Class B," three mills per acre in "Class C," two mills per acre in "Class D," and one mill per acre in "Class E." This shall form the basis of the assessment of benefits to the lands for drainage purposes. In any district lands may be included which are not benefited for the agriculture or crop production, or slightly so, but which will receive benefit by improvement in health conditions, and as to such lands the engineer and viewers may assess each tract of land without regard to the ratio and at such a sum per acre as will fairly represent the benefit of such lands. Villages or towns or parts thereof and small parcels of land located outside thereof and used primarily for residence or other specific purposes, and which require drainage, may also be included in any drainage district which by reason of their improved conditions and the limited area in each parcel under individual ownership, it is impracticable to fairly assess the benefits to each separated parcel of land by the ratio herein provided, and as to such parcels of land the engineer and viewers may assess each parcel of land without regard to the ratio and at a higher rate per acre respectively by reason of the greater benefits. If the streets or other property owned by any incorporated town or village are likewise benefited by such drainage works, the corporation may be assessed in proportion to such benefits, which assessment shall constitute a liability against the corporation and may be enforced as provided by law.

The board of viewers may determine that some areas of the district will receive more benefits than other areas and if such is determined, the varying benefits shall be reflected in the manner of classification of benefits to each area and the tracts of land therein. (1909, c. 442, s. 12; C.S., s. 5329; 1923, c. 217, s. 1; 1961, c. 614, s. 7.)

§ 156-72. Extension of time for report.

In case the work is delayed by high water, sickness, or any other good cause, and the report is not completed at the time fixed by the court, the engineer and viewers shall appear before the court and state in writing the cause of such failure and ask for sufficient time in which to complete the

work, and the court shall set another date by which the report shall be completed and filed. (1909, c. 442, s. 14; C.S., s. 5330.)

§ 156-73. Final report filed; notice of hearing.

When the final report is completed and filed it shall be examined by the court, and if it is found to be in due form and in accordance with the law it shall be accepted, and if not in due form it may be referred back to the engineer and viewers, with instructions to secure further information, to be reported at a subsequent date to be fixed by the court. When the report is fully completed and accepted by the court a date not less than 20 days thereafter shall be fixed by the court for the final hearing upon the report, and notice thereof shall be given by publication in a newspaper of general circulation in the county and by posting a written or printed notice on the door of the courthouse and at five conspicuous places throughout the district, such publication to be made once a week for at least three consecutive weeks before the final hearing. During this time a copy of the report shall be on file in the office of the clerk of the superior court, and shall be open to the inspection of any landowner or other persons interested within the district. (1909, c. 442, s. 15; C.S., s. 5331; 1959, c. 807, ss. 1, 2; 1963, c. 767, s. 2.)

§ 156-74. Adjudication upon final report.

At the date set for hearing any landowner may appear in person or by counsel and file his objection in writing to the report of the viewers; and it shall be the duty of the court to carefully review the report of the viewers and the objections filed thereto, and make such changes as are necessary to render substantial and equal justice to all the landowners in the district. If, in the opinion of the court, the cost of construction, together with the amount of damages assessed, is not greater than the benefits that will accrue to the land affected, the court shall confirm the report of the viewers. If, however, the court finds that the cost of construction, together with the damages assessed, is greater than the resulting benefit that will accrue to the lands affected, the court shall dismiss the proceedings at the cost of the petitioners, and the sureties upon the bond so filed by them shall be liable for such costs. Provided, that the Department of Environmental Quality may remit and release to the petitioners the costs expended by the board on account of the engineer and his assistants. The court may from time to time collect from the petitioners such amounts as may be necessary to pay costs accruing, other than costs of the engineer and his assistants, such amounts to be repaid from the special tax hereby authorized.

The court shall, at the time of consideration of said report, determine whether:

- (1) The petitioners constitute a majority of the resident landowners, whose lands are adjudged to be benefited by the proposed construction work as shown in the final report of the board of viewers and finally approved by the court; or
- (2) The petitioners own three fifths of the land area which is adjudged to be benefited by the proposed construction work as shown in the final report of the board of viewers and finally approved by the court.

If the petitioners do not constitute either a majority of the resident landowners or own three fifths of the land as set out in subdivisions (1) or (2) above, then the proceedings shall

be dismissed. (1909, c. 442, s. 16; 1915, c. 238, s. 2; 1917, c. 152, s. 16; C.S., s. 5332; 1925, c. 122, s. 4; 1959, c. 1312, s. 1; 1961, c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(158); 1997-443, s. 11A.123; 2015-241, s. 14.30(u).)

§ 156-75. Appeal from final hearing.

Any landowner, party petitioner, or the drainage district may, within 10 days after the entry of an order or judgment by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. The procedures for taking appeal are as provided in Article 27A of Chapter 1 of the General Statutes, except as provided otherwise by this Subchapter. In an appeal to the superior court taken under this section or any other section or provision of the drainage laws of the State, general or local, the appeal has precedence in consideration and trial by the court. If other issues also have precedence in the superior court under existing law, the court, in its discretion, determines the order in which they are heard. (1909, c. 442, s. 17; 1911, c. 67, s. 3; C.S., s. 5333; 1923, c. 217, s. 2; 1969, c. 192, s. 1; 1973, c. 108, s. 96; 1999-216, s. 20.)

§ 156-76. Compensation of board of viewers.

The compensation of the engineer, including his necessary assistants, rodmen, and laborers, and also the compensation of the viewers, shall be fixed by the clerk. In fixing such compensation, particularly of the drainage engineer, the clerk shall confer fully with the Department of Environmental Quality and with the petitioners. The compensation to be paid the two members of the board of viewers, other than the engineer, shall be in such amount per day as may be fixed by the clerk of the superior court for the time actually employed in the discharge of their duties, and in addition any actual and necessary expenses of travel and subsistence while in the actual discharge of their duties, an itemized report of which shall be submitted and verified. (1909, c. 442, s. 36; 1917, c. 152, ss. 1, 2; C.S., s. 5334; 1925, c. 122, s. 4; 1959, c. 288; 1961, c. 1198; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(159); 1997-443, s. 11A.123; 2015-241, s. 14.30(u).)

§ 156-77. Account of expenses filed.

The engineer and viewers shall keep an accurate account and report to the court the name and number of days each person was employed on the survey and the kind of work he was doing, and any expenses that may have been incurred in going to and from the work, and the cost of any supplies or material that may have been used in making the survey. (1909, c. 442, s. 13; C.S., s. 5335.)

§ 156-78. Drainage record.

The clerk of the superior court shall provide a suitable book, to be known as the "Drainage Record," in which he shall transcribe every petition, motion, order, report, judgment, or finding of the board in every drainage transaction that may come before it, in such a manner as to make a complete and continuous record of the case. Copies of all the maps and profiles are to be furnished by the engineer and marked by the clerk "official copies," which shall be kept on file by him in his office, and one other copy shall be pasted or otherwise attached to his record book. (1909, c. 442, s. 18; C.S., s. 5336.)

§ 156-78.1. Municipalities.

(a) Any municipality may participate in drainage district works or projects upon mutually agreeable terms relating to such matters as the construction, financing, maintenance and operation thereof.

(b) Any municipality may contribute funds toward the construction, maintenance and operation of drainage district works or projects, to the extent that such works or projects:

- (1) Provide a source of municipal water supply for the municipality, or protect an existing source of such supply, enhance its quality or increase its dependable capacity or quantity, or implement or facilitate the disposal of sewage of the municipality; or
- (2) Protect against or alleviate the effects of floodwater or sediment damages affecting, or provide drainage benefits for property owned by the municipality or its inhabitants.

(c) Municipal expenditures for the aforesaid purposes are declared to be for necessary expenses. Municipalities may enter continuing contracts, some portion or all of which may be performed in an ensuing year, agreeing to make periodic payments in ensuing fiscal years to drainage districts in consideration of benefits set forth in subsection (b)(2) of this section, but no such contract may be entered into unless sufficient funds have been appropriated to meet any amount to be paid under the contract in the fiscal year in which the contract is made. The municipal governing body shall, in the budget ordinance of each ensuing fiscal year during which any such contract is in effect, appropriate sufficient funds to meet the amount to be paid under the contract in such ensuing fiscal year. The statement required by G.S. 160-411.1 to be printed, written or typewritten on all contracts, agreements, or requisitions requiring the payment of moneys shall be placed on such a continuing contract only if sufficient funds have been appropriated to meet the amount to be paid under the contract in the fiscal year in which the contract is made.

(d) The provisions of this section are permissive. If a municipality does not participate in accordance with the provisions of this section, then the other provisions of Subchapter III shall apply and be followed. (1961, c. 614, s. 10.)